

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

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|-----------------------------------|---|---|
| Jimmy F. Scarborough, #292923 |) | Civil Action No.: 8:07-4129-MBS-BHH |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | <u>REPORT AND RECOMMENDATION</u> |
| |) | <u>OF MAGISTRATE JUDGE</u> |
| Warden Raymond Reed, Jr., Manning |) | |
| C.I., |) | |
| |) | |
| Respondent. |) | |

The petitioner brought this action seeking relief pursuant to Title 28, United States Code, Section 2254. On May 29, 2008, the respondent filed a motion for summary judgment. On May 30, 2008, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the petitioner elected not to respond to the motion.

As the petitioner is proceeding *pro se*, the court filed a second order on July 8, 2008, giving the petitioner through July 31, 2008, to file his response to the motion for summary judgment. The petitioner was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. The petitioner elected not to respond.

Based on the foregoing, it appears the petitioner no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution and for failure to comply with this Court's orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989).

s/Bruce Howe Hendricks
United States Magistrate Judge

August 12, 2008

Greenville, South Carolina